

APPEAL NO. 030721
FILED MAY 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 18, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the third and fourth quarters because she had not made a good faith effort to find employment commensurate with her ability to work during the relevant qualifying periods and because her unemployment was not a direct result of her compensable injury.

The claimant appeals, contending that she is unable to return to her preinjury employment as a flight attendant and that while she is able to work she has some restrictions. Regarding the good faith job search, the claimant presented evidence on some 72 job contacts during the third quarter qualifying period and 52 job contacts during the fourth quarter qualifying period. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed but reversing a finding of fact.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case is both the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1). The parties stipulated to the other required elements and that the qualifying period was from June 19 through December 17, 2002. It is undisputed that the claimant had some ability to work. The claimant's compensable injury includes the right shoulder, upper back, left foot, and left ankle. The claimant testified that her left foot and ankle continue to bother her the most. The claimant testified that she has trained as an executive secretary and that she is a certified paralegal.

The hearing officer principally addressed the good faith job search requirement. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Subsection (e) then lists information to be considered in determining whether an employee has made a good faith effort to obtain employment. The claimant submitted evidence of some 72 job contacts in the third quarter qualifying period and 52 job contacts in the fourth quarter qualifying period indexed and cross-referenced in some notebooks and logs. The hearing officer commented on the claimant's evidence stating:

In an effort to provide verifications of her job contacts Claimant presented with tabbed and indexed notebooks. In direct and cross-examination Claimant could not provide correlation between these notebooks and her job search activity. In an effort to provide accurate documentation Claimant has overlooked the good faith part of the job search. Claimant has not tried to find a job, she has tried to provide documentation to qualify for [SIBs]. Claimant did not made [sic] a good faith job search effort in the Qualifying Periods for these disputed quarters.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility to be given to the evidence. Section 410.165(a). The hearing officer simply found that the claimant's efforts were geared to qualify for SIBs rather than to obtain employment commensurate with her ability to work. The decision is supported by some evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding the direct result criteria there was little evidence presented on that requirement and the hearing officer did not discuss how he arrived at his determination. The Appeals Panel has held that one of the ways to meet the direct result criteria is to show that the claimant had a serious injury with long-lasting effects which preclude a return to the preinjury employment. It is relatively undisputed that the claimant cannot return to her preinjury employment as a flight attendant and that her injury has had long-lasting effects. Consequently, we conclude that the claimant has met the direct result criteria and in the absence of an explanation from the hearing officer why that is not so we reverse the determination that the claimant's unemployment is not a direct result of her compensable impairment. However, in that we are affirming the hearing officer's determinations on the good faith requirement we also affirm the hearing officer's decision on entitlement to SIBs.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge